**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN**
**AT JAIPUR BENCH**

[1] S.B. CIVIL WRIT PETITION NO.6579/06

Dr. Kaptan Singh & Ors. **Versus** State & Ors.

[2] S.B. CIVIL WRIT PETITION NO.6362/06

Dr. Raj Kumar Sharma & Ors. **Versus** State & Ors.

**DATE OF ORDER :: 10/04/2007**

**HON'BLE MR. JUSTICE AJAY RASTOGI**

Mr. S.P. Sharma, for petitioners
Mr. B.K. Sharma, Dy.G.A.
Mr. S.N. Kumawat, for respondent-Commission

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With the consent of parties, both the writ petitions are decided at this stage.

Instant petitions have been filed by petitioners who participated in the process of selection initiated by the Commission for the post Medical Officer in pursuance of advertisement dated 5th July, 2005 and on their selection, they were found suitable and placed in the reserve list.

The post of Medical Officer is included in the Schedule appended to Rajasthan Medical & Health Service Rules, 1963 and is to be filled by direct recruitment in terms of procedure provided under Part IV of the rules. Necessary facts which require for adjudication of the dispute are advertisement which was issued from the office of

Commission dated 5th July, 2005 whereby 369 vacancies were advertised out of which 119 were reserved for open category. The result of final selection was declared by Commission on 1st March, 2006 and the main list was sent by the Commission on 4th April, 2006 out of which, the State Government gave appointment to 326 candidates. Out of appointments offered, 71 appointments were cancelled due to various reasons, as such 71 posts remained unfilled from the vacancies advertised on 5th July, 2005. The Commission sent names in terms of requisition on 28th September, 2006 which has been placed on record along with additional affidavit as Ann.R/1 & Ann.R/2 respectively. In addition to it, requisition of 68 candidates was further sent by the Government vide letter dated 29th September, 2006, but since there was no category-wise bifurcation, certain query was raised by the Commission and finally names in pursuance of requisition sent by the Government dated 29th September, 2006 were withheld by the Commission and according to them, since six months have expired, as such the Commission was not under an obligation to send the reserve list thereof at later stage.

Petitioners approached this court and interim order was passed on 25th August, 2006. In compliance thereof, the Commission sent additional reserve list to the State Government

vide letter dated 13th December, 2006 [Ann.R/3]. In the additional affidavit filed by respondent, particularly, in Para 4 statement has been made that candidates were given appointment from the reserve list, but because of pendency of dispute further appointments could not have been made.

The controversy in the instant petitions was basically on the issue as to whether the Commission was justified in with-holding the names, particularly, when requisition was sent in their office within a period of six months. This question does not now require consideration in the instant matter for the reason that in terms of interim order of this court, the Commission has sent the reserve list on 13th December, 2006 and now which is available with the Government for consideration in making appointment in pursuance of advertisement dated 5th July, 2005.

Counsel for petitioners submits that once the reserve list has been sent in the office of Government and vacancies duly advertised are still available, they may be considered for appointment.

Counsel for State submits that list has been received from the office of Commission and they will examine and consider the names for appointment in accordance with the Rules, 1963.

Mr. S.N. Kumawat, appearing for Commission, submits that infact the Commission was not under an obligation under the rules to send the additional requisition sent in their office, but because of interim order, list has already been sent. As such, the Commission has no further role to play in regard to making appointment out of the list which has already been sent in the office of Government. Under the scheme of rules, the recommendations are made by the Commission in terms of Rule 20 of the rules and after the list is received by the Government, the State Government considers such names which are recommended for appointment in terms of Rule 22 of the Rules, 1963 and certainly, it is for the employer to take decision as to whether names sent in their office are to be considered for appointment or not.

Counsel for petitioners has placed reliance on the judgment of this court in **Dr. Mathura Lal Vs. State & Anr. [1996(2) RLR 104]** wherein this court considered as to whether the Commission can withhold the names found place in the reserve list despite requisition received in their office within six months, but it is of no assistance in the facts of instant matter, particularly, when the names have already been sent by the Commission to the State Government in pursuance of requisition.

Consequently, the writ petition stands disposed of with the observation that since the list has been received in the office of State Government, the Government will be free to consider the candidature of such petitioners for appointment whose names find place in the reserve list received in their office in accordance with scheme of Rules, 1963.

**[AJAY RASTOGI],J.**

FRBOHRA,JR.P.A.